

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

GARGIULO PRODUCE

and

Case 22-CA-177315

**LOCAL 108, RETAIL, WHOLESALE,
AND DEPARTMENT STORE UNION,
UNITED FOOD & COMMERCIAL WORKERS**

ORDER

The Employer's Petition to Revoke subpoena duces tecum B-1-TOM9AH is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena.¹

¹ In considering the petition to revoke, we have evaluated the subpoena in light of the Region's withdrawal of pars. 3, 8, 9, and 10 due to the Employer's representation that no responsive documents exist, and the Region's statements that it no longer seeks documents pertaining to Luis Santiago, Salvador Oliveros, or Peter Gargiulo in pars. 6 and 7, in light of the Employer's stipulation that those three individuals are supervisors within the meaning of Sec. 2(11) of the Act. We also acknowledge the Region's stipulation that the Employer may redact sensitive personal information, such as Social Security numbers, though Acting Chairman Miscimarra, for reasons outlined below, dissents from the majority's denial of the petition to revoke based, in part, on that stipulation. Contrary to our dissenting colleague's assumption, the Region's modification of the subpoena does not establish that the subpoena initially was overbroad, and we find that it was not. Instead, it appears that the Region's modifications are designed to promote efficiency and provide greater clarity to the parties. If after such redactions the Employer still has legitimate privacy concerns as to specific information or documents sought by the subpoena, it is free to identify such information or documents and seek a confidentiality agreement from the Region. Finally, it appears that the references to "personal records" in pars. 2 and 6 are typographical errors, and we have interpreted them as references to *personnel* records.

See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., March 8, 2017.

PHILIP A. MISCIMARRA,	ACTING CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

Acting Chairman Miscimarra respectfully dissents from the Board majority's denial of the petition to revoke as to subpoena requests that encompassed personal identification information. In this case, with regard to paragraph one of the subpoena, which sought two employees' personnel records, the petition to revoke argued that the employees' privacy rights precluded production of these records, and, in response, counsel for the General Counsel clarified that he did not seek personal identification information. In such circumstances, when subpoena requests are overly broad or otherwise seek information that does not reasonably relate to matters under investigation, and when a subpoenaed party's petition to revoke raises appropriate objections to the requests on that basis, Acting Chairman Miscimarra believes it is more appropriate for the Board to *grant* the petition to revoke as to such requests, rather than denying the petition to revoke (as the Board majority does here) based on changes that are communicated only in briefs submitted after the petition to revoke is under consideration by the Board. See Sec. 11(1) (stating the Board "shall revoke" any subpoena where "the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required"). Granting a petition to revoke in these circumstances would be without prejudice to a party's potential right to apply for the issuance of a new subpoena that is appropriate in scope (subject to applicable time limits and other requirements set forth in the Act and the Board's Rules and Regulations).